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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
(DIVISION BENCH)

CORAM : HON'BLE SHRI V.K. SHRIVASTAVA &
HON'BLE SHRI DHIRENDRA MISHRA, JJ

WRIT PETITION (CIVIL) NO. 46 OF 2007

Petitioner : M/s Bhawna Enterprises, A Proprietorship Firm, Through its Proprietor Smt. Bhawna Agrawal, Wife of Shri S.K. Agrawal, Aged about 35 years, R/o Old Sarkanda, Bilaspur, Chhattisgarh.

Versus

Respondents :

1. State of Chhattisgarh, Through Secretary, Ministry of Forest, Dau Kalyan Bhawan, Mantralaya, Raipur.

2. Managing Director, Chhattisgarh Minor Forest Product (T&D) Cooperative Federation Limited, A-25, VIP Estate, In front of VIP Club, Raipur 492 007.

Present :- Shri Satish Agrawal, Shri Sunil Otwani and Shri K.K. Tiwari, learned counsel for the petitioner.

Shri Prashant Mishra, learned Additional Advocate General for the State/respondents.

Shri A.K. Singh, Managing Director, Chhattisgarh Minor Forest Produce Cooperative Federation Limited is also present.

(ORAL ORDER)
(Passed on 10th January, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

Respondent No.2 for sale of Tendu leaves to be collected in the year 2007 invited tenders/bids from prospective bidders to purchase the same vide notification No.T.P.(2007)-1 dated 6-11-2006, *inter alia*, on various terms and conditions. The petitioner is a proprietorship firm constituted and established to carry on the business of sale and purchase of Tendu leaves as well as other forest products. The petitioner is

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registered to carry on the business of sale and purchase of Tendu leaves with the State of Chhattisgarh under the provisions of Chhattisgarh Tendu Patta (Vyapar Viniyaman) Niyamawali, 1966. Petitioner after depositing earnest money approximately Rs.56.00 lacs submitted tender for the first round. Similarly bidders/tenderers across the State also submitted their bids/tenders to purchase Tendu leaves. The tenders/bids submitted were opened on 12-12-2006 and the price offered by the purchasers was made public on the same date. Petitioner's bid was highest in respect of units 764, 543, 679, 756, 755, 721, 754, 716, 776, 673, 672, 542, 394, 371, 369, 368, 367, 366, 321A, 321B & 323A and according to prevailing practice within the normal period he was to be declared successful for those units and thereafter necessary formalities were required to be completed, but all of a sudden respondent No.2 vide Annexure-P/1 floated another tender notice and rejected earlier bids submitted by the petitioner and other prospective bidders.

2) Annexure – P/1 reads as below :

> **"Result of first round of tender of tendu leaves of 2007 season and information for the second round tender**
>
> All the offers given by the tenderers in notification No. T.P.(2007)-I dated 06.11.2006 (Tender opening Date 12.12.2006) have been rejected. The second round of the tender submission date is changed from 09.01.2007 to 11.01.2007 and the tender opening date is changed from 10.01.2007 to 12.01.2007. The remaining conditions of the tender notification No.T.P.(2007)-I dated 06.11.2006 will remain same. The tenderers can use their E.M.D. deposited in first round of tender in second round of tender. The tenderers of first round who are interested in taking the refund of E.M.D. should send their request to the Federation. The tenderers are specifically advised :-
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> 1. To enclose the registration of Manufacturer/ Exporter of tendu leaves for the year 2007 and not for the year 2006.
> 2. The tenderer must download the Tender Form along with Tenderer's Agreement (total pages 10) and must sign the tender form and tenderer's agreement. The tenderers should not download the model tender form from tender condition.

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3. Click the Lot List option at Home page. After that click the tender form option in lot list page and then download the tender form in Hindi or English."

3) Petitioner stating various facts, alleging arbitrariness, violation of principles of natural justice, illegitimacy, unreasonable and unfairness, instituted the instant petition & M.(W.).P.No.72 of 2007 for grant of following relief/ad-interim relief :

"**Relief :**

i. issue writ of certiorari, order, command, instructions to the respondents to call for entire record of tender received pursuant to Notification No. TP (2007)-I and quash the order dated 5.1.2007 :

ii. issue a writ of mandamus, order, command, instructions to the respondents to confirm to the results declared on 12.12.2006 and declare the petitioner as successful bidder in respect of the Units (i.e. 764, 543, 679, 756, 755, 721, 754, 716, 776, 673, 672, 542, 394, 371, 369, 368, 367, 366, 321-A, 321-B, 323-A maximum capacity) in which prices offered by petitioner were highest and resultantly issue a letter of allotment to the petitioner;

iii. Pass any other or further order deemed fit and necessary in the facts and circumstances of the case."

"**Ad-Interim relifef - {M.(W.).P.No.72 of 2007} :**

i. Stay the operation of order dated 05.01.2007; in alternative;

ii. Direct the respondent No.2 not to take any bid on the 180 lots in which petitioner has offered highest bid; in alternative;

iii. Direct the respondent No.2 to not open /read the bid offered by prospective bidders as much as the same relate to 180 lots in which petitioner has offered highest bid;

iv. Pass any other or further order (s) deemed fit and necessary in the facts and circumstances of the matter."

4) During the course of arguments, learned counsel for the petitioner placed reliance upon the judgments of Hon'ble Supreme Court rendered in the following cases :

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- K.N. Guruswamy vs. The State of Mysore and others[1]
- Mohinder Singh Gill and another vs. The Chief Election Commissioenr, New Delhi[2]
- Ramana Dayaram Shetty vs. International Airport Authority of India and others[3]
- M/s Kasturi Lal Lakshmi Reddy, etc. vs. The State of Jammu & Kashmir and another[4]
- Ram and Shyam Company vs. State of Haryana and others[5]
- Shri Harminder Singh Arora vs. Union of India and others[6]
- Haji T.M. Hassan Rawther vs. Kerala Financial Corporation[7]
- M/s Star Enterprises and others vs. City and Industrial Development Corporation of Maharashtra Ltd. And others[8]
- Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries[9]
- Sterling Computers Limited vs. M/s M & N Publications Limited and others[10]
- Union of India and others vs. Hindustan Development Corpn. And others[11]
- Tata Cellular vs. Union of India[12]
- Bannari Amman Sugar Ltd. vs. Commercial Tax Officer and others[13]
- Ram Pravesh Singh and others vs. State of Bihar and others[14]

5) Learned counsel for the petitioner vehemently contented that the action taken by the State is arbitrary, illegal, unfair & violative of Article 14 of the Constitution of India and the steps taken by the State are only to allow undue advantage to the unsuccessful bidders.

6) On the other hand, learned counsel for the State/respondents opposed the same and contended that opening of bids and making price offered by prospective purchasers public do not confer any right to tenderer, till his bid is accepted by the Inter Department Committee (for

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[1] AIR 1954 SC 592
[2] AIR 1978 SC 851
[3] (1979) 3 SCC 489
[4] AIR 1980 SC 1992
[5] AIR 1985 SC 1147
[6] AIR 1986 SC 1527
[7] AIR 1988 SC 157
[8] (1990) 3 SCC 280
[9] (1993) 1 SCC 71
[10] (1993) 1 SCC 445
[11] (1993) 1 SCC 467
[12] (1994) 6 SCC 651
[13] (2005) 1 SCC 625
[14] (2006) 8 SCC 381

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brevity "the IDC"), here in the instant matter, after due consideration. The IDC arrived at a conclusion that in the adjoining States bidders have given much higher rates in comparison to the rates proposed in the State of Chhattisgarh, therefore, in order to fetch more revenue in the interest of State and for the benefit of people of State they, in accordance with the terms and conditions of the tender notice rejected the offer given by the petitioner and others that too without making any discrimination and even further allowed all those purchasers to bid afresh.

7) We have gone through the record, annexed documents and considered meticulously the arguments advanced by learned counsel appearing for both the parties.

8) Tender notice having all terms and conditions was floated on 6-11-2006, at page 11 of it, there is a *specific condition that State without assigning any reason reserves its right to reject the tender*.

9) By floating fresh tender the State has mentioned very specifically that tenderers can use their Earnest Money Deposit (for brevity "EMD") deposited in first round of tender in second round and if they want to take back their EMD, they should send their request. All bids submitted by prospective bidders have been rejected without any discrimination.

10) It is not in dispute that in the adjoining States much higher bids have been offered. Only contention made by the petitioner is that due to prevailing taxes, conditions of the States, production, quality of leaves etc., different rates have been offered in other States and if higher rates have been offered in other States, that does not mean that for State of Chhattisgarh also those higher rates will be offered. It is not in dispute that in this year in the first round exorbitant high rates have been quoted in comparison to past years.

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11) This Court can undoubtedly interfere with the affairs of the State in case this Court, *prima facie,* finds that State withdrew the benefits in contravention of principles of equity and without considering the public equity or if there is reason to believe that the affairs of the State is wrapped with arbitrariness, illegality, unfairness or violative of principles of natural justice.

12) Here in the instant case, when there is possibility of fetching more revenue by the State by inviting fresh tenders and when the State without discriminating any bidders has, in accordance with terms of the tender notice rejected all the bids, how it can be accepted that the State violating principles of equity or infringing the rights of petitioner or others or in unfair manner, has rejected the tender dated 6-11-2006 and invited fresh. The decision making process adopted by the State is transparent. It is not violative of Article 14 of the Constitution. State is a trusty of its citizens and has a bounden duty to protect the interest of its people and that the State has done here in the instant case having considered all the aspects by inviting a fresh tender.

13) After due consideration, we are of the considered opinion that the petitioner's bid was not finalized or accepted by the State and petitioner has not been deprived of his any right having yet opportunity to take part in the fresh tender process, act of the State in no way, causes prejudice or takes away petitioner's right.

14) We do not find any substance in the instant writ petition, therefore, we dismiss the petition as well as M.(W.).P.No.72 of 2007.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge

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